



**STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

MEMORANDUM

DATE: September 29, 2009

TO: Stephanie Vaughn, Manager
DSHS Rules and Policy Assistance Unit

FROM: Judy Johnson, Program Manager
Policy, Program Development and Training Unit
Residential Care Services

SUBJECT: Small Business Economic Impact Statement and Cost-Benefit Analysis for Proposed Amendments to Chapter 388-78A WAC, Boarding Homes.

SUMMARY OF PROPOSED RULES

The Department of Social and Health Services, Residential Care Services (RCS), is proposing amendments to Chapter 388-78A, Boarding Homes.

The purpose of the proposed rule-making is to make editorial and clarifying changes and to make the rules consistent with current laws and standards.

Highlights of proposed changes:

- Editorial and housekeeping changes in the following sections: preadmission assessment, food and nutrition services, sections related to preliminary findings,
- Clarified Medicaid issues to be consistent with RCW 18.20.440 and SSB 6009.
- Deleted construction tables to eliminate redundancy, and clarified that new construction must comply with rules in effect at the time of plan approval.
- Clarified management agreement requirements.
- Clarified tuberculosis requirements to be consistent with current standards
- Clarified when notice is considered complete and proof of notice.
- Updated disqualifying crime requirements.
- Added liability insurance requirement to rule.

SMALL BUSINESS IMPACT STATEMENT

RCW Chapter 19.85, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses and outlines the information that must be included in a Small Business Economic Impact Statement (SBEIS). Preparation of a SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

RCS has analyzed its proposed rules and concludes that the new requirement of liability insurance may impose a new cost to the boarding home that does not already have liability insurance. Approximately 351 (63.3%) boarding homes have contracts and are required to have liability insurance. Although 36.4% of the boarding homes do not have contracts, many of those facilities may already have liability insurance, including those who may have liability insurance coverage required by their banks or landlords.

The cost of liability insurance ranges in price depending on many variables such as level of care, number of residents, expertise of staff, outcome of inspections, loss history, and the length of time the administrator has been working. According to three insurance companies, the estimated average cost for a combination of liability insurance that also covers professionals for the boarding home is \$150 to \$200 per bed.

RCS understands that some of the cost of the liability insurance can be deducted as a legitimate business expense when taxes are filed with the Internal Revenue Service. RCS does not believe that the proposed rules will result in any job losses or gains for boarding homes. The proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND BENEFITS

RCS has determined that some of the proposed rules are "significant legislative rules" as defined by legislature. As required by RCW 34.05.328(1) (c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS

- The liability insurance requirement for all boarding homes may impose additional costs to those boarding homes that currently do not have insurance coverage.
- DSHS has shared the draft language with interested parties who participate in a stakeholder meeting to discuss the proposed rule changes.

At the meeting, liability insurance was brought up by a stakeholder as a potential cost.

- In addition, the draft language was posted on the Aging and Disability Services Administration internet website for anyone in the public to review and comment.
- DSHS used the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, the department has received and considered written comments on the draft language and one comment on the cost impact of the proposed liability insurance requirement.

COST SAVINGS

Clarity of the proposed rule could save providers costs in time and dollars by:

- Clarifying rule language for the provider; and
- Clarification could reduce the need for clarifying technical support and dear provider letters due to confusing rules.

OTHER BENEFITS

The proposed rule amendments result in several benefits. Benefits may include:

- The liability insurance requirement will provide a consistent standard among those with contracts with DSHS and those without contracts.
- The liability insurance requirement will provide all residents with another level of consumer protection.
- The liability insurance requirement may help boarding homes defend themselves and pay awarded damages without threatening their financial stability.
- The amendments are clearer, and easier to read, understand and apply; and
- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements.

CONCLUSION

RCS concludes that the benefits of the proposed amendments exceed the possible cost. These rules continue to implement state laws and regulations related to boarding homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact Judy Johnson by email at johnsim1@dshs.wa.gov or by telephone at (360) 725-2591 if you have questions.